

ANNUAL REPORT TO THE GOVERNOR AND THE LEGISLATURE

WHISTLEBLOWER RETALIATION COMPLAINTS

COMPLAINTS OF RETALIATION FOR THE
DISCLOSURE OF INFORMATION BY PUBLIC
EMPLOYEES

January 1, 2008 through December 31, 2008

Prepared By The

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June 2009

**ANNUAL REPORT TO THE GOVERNOR AND THE LEGISLATURE
COMPLAINTS OF RETALIATION FOR THE DISCLOSURE OF INFORMATION BY
PUBLIC EMPLOYEES (WHISTLEBLOWER RETALIATION)**

June 30, 2009

Introduction

Government Code section 19683(f) provides, "In order for the Governor and the Legislature to determine the need to continue or modify state personnel procedures as they relate to the investigations of reprisals or retaliation for the disclosure of information by public employees, the State Personnel Board, by June 30 of each year¹, shall submit a report to the Governor and the Legislature regarding complaints filed, hearings held, and legal actions taken pursuant to this section." This report is prepared by the State Personnel Board (SPB) for the calendar year of January 1, 2008 through December 31, 2008.

Background

Protection for state employees from retaliation for having reported improper governmental activities was first provided in 1985. At that time, the SPB was assigned responsibility for investigation of complaints of whistleblower retaliation.

Amendments to the whistleblower retaliation protections were made in 1987, 2000, 2001, and 2004. In 2002, SPB adopted regulations to implement the whistleblower retaliation laws.

Effective March 8, 2006, the SPB's regulations were revised to include the requirement that the Executive Officer refer cases for investigation or schedule an informal hearing before an administrative law judge.

Information

Whistleblowing is defined as either disclosing information that a state or community college employee, or applicant for state or community college employment, reasonably believes is evidence of an improper governmental activity, or refusing to obey an illegal order or directive.

¹ Six reports were produced between 1987 and 1992. In 1992, Chapter 710 legislation (Government Code section 7550.5) instituted a moratorium on most reports to the Legislature. The moratorium was renewed in 1994 and 1996, and became inoperative on October 1, 1999. After the moratorium was finally repealed as of January 1, 2000, Whistleblower Retaliation Reports were again produced for calendar years 2000, 2001, 2002, 2003, 2004, 2005, 2006 and 2007.

Three agencies play major roles in whistleblower retaliation, the Bureau of State Audits (BSA), the Office of the Inspector General (OIG) and the SPB.

BSA accepts complaints in reference to improper governmental activities. BSA is the investigative agency that has jurisdiction to investigate the underlying improper governmental activity.

OIG's specific responsibility in whistleblower retaliation complaints is to investigate complaints of retaliation against those who report misconduct on the part of state correctional agencies and employees. OIG may, with the approval of the complaining employee, forward its investigative findings to the SPB for the purpose of bringing disciplinary action against an employee who is found to have violated the retaliation provisions when the department fails to do so. As an independent agency, OIG reports to the Governor. OIG also provides impartial analysis and policy recommendations to the Governor, the Legislature, and correctional administrators.

SPB is the adjudicatory body that hears and decides complaints of whistleblower retaliation by state civil service or community college employees or applicants who allege being subject to or threatened with an improper personnel action for disclosing improper governmental activity or refusing to obey an illegal order or directive.

The SPB has jurisdiction in whistleblower retaliation cases when all of the requirements listed below are met:

- A state or community college applicant or employee files the complaint.
- The complaint states a prima facie case of retaliation.
- The appeal is filed within one year of the most recent act or reprisal.
- A perjury statement is included with the complaint.

SPB does not accept filed appeals when any of the above requirements are not met or the SPB does not have jurisdiction over the employing entity (e.g. University of California, California State University).

Complaint Activity

In calendar year 2008, 62 whistleblower retaliation complaints were filed, which is a 21.5% increase from 2007 (51 complaints received). Of the 62 complaints filed in 2008, 40 of those complaints were accepted.

Of those 40 cases, 7 were dismissed by the Board after an informal or formal hearing, 23 are pending, 6 were settled by stipulated agreement, and 4 were withdrawn by the Appellants. Of the 23 cases pending, 4 cases are scheduled for formal evidentiary hearing before an Administrative Law Judge and 19 cases are pending results from, or are scheduled for, an informal hearing. A detailed complaint activity chart appears on page 3.

**SPB Whistleblower Retaliation Complaints
Activity Report
(January 2008 – December 2008)**

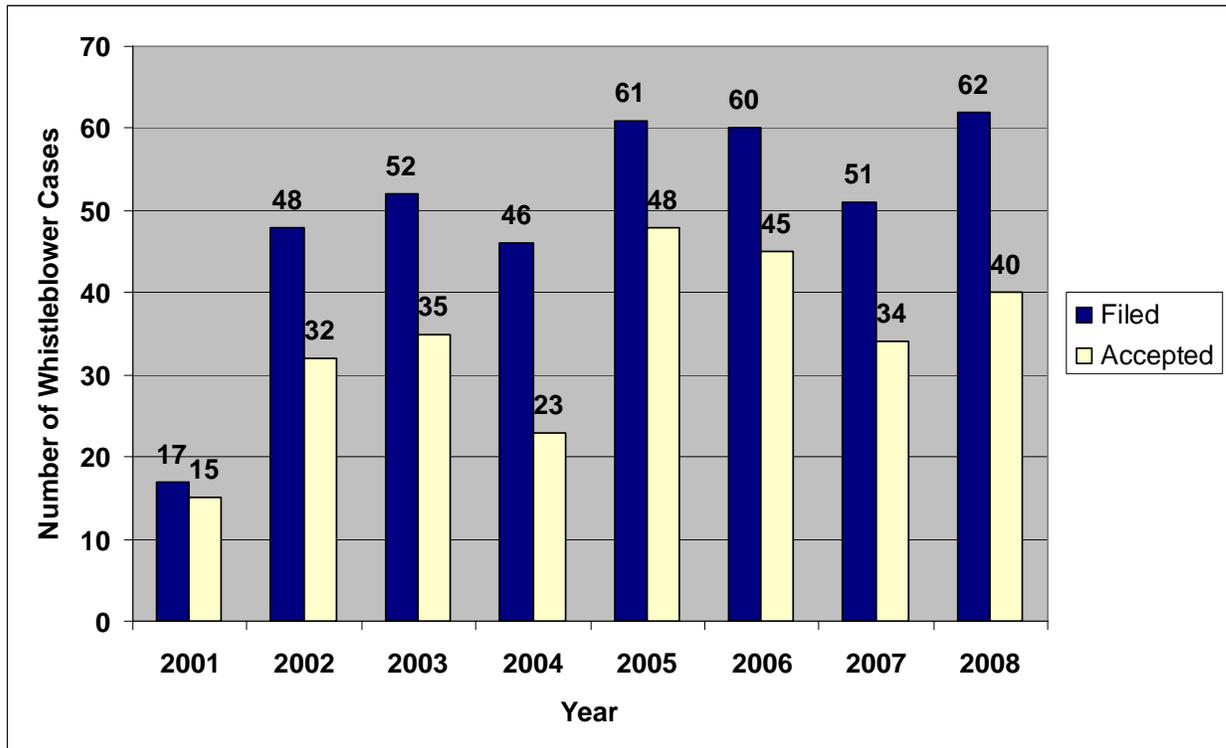
I. Whistleblower Appeals filed

Total Filed	Appeals Not Accepted ²	Appeals Accepted
62	22	40

II. Disposition of Whistleblower Appeals Accepted

Denied/Dismissed	Pending Decision	Stipulated Agreement	Withdrawn	Total
7	23	6	4	40

III. Comparison of Whistleblower Appeals filed each Year



² SPB does not accept filed appeals when: (a) The complaint fails to state a prima facie case of retaliation; (b) the complaint is not filed within one year of the most recent act of reprisal; (c) the complaint is not signed by penalty of perjury; or (d) the SPB does not have jurisdiction over the employing entity (e.g. University of California, California State University).

**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2008**

	Number	Appeal Date	Case Status	Department	Consolidated³	RDAT₄	Formal/Informal Hearing
1	08-2063	5/5/2008	Case Closed-Lack of Jurisdiction	Corrections	N/A	N	N/A
2	08-3195	7/8/2008	Pending	Corrections	N/A	Y	Informal
3	08-3902	8/21/2008	Case Closed-Notice of Finding/Dismissed	Corrections	N/A	N	N/A
4	08-3997	8/20/2008	Pending	Corrections	DC-08-3967	Y	Formal
5	08-4252	9/10/2008	Case Closed-No Prima Facie Case	Victim Compensation & Govt Claims Bd	N/A	N	N/A
6	08-4344	9/15/2008	Pending	Long Beach Community College District	N/A	Y	Informal
7	08-4350	9/18/2008	Case Closed-Appeal Withdrawn by Appellant	Developmental Services	N/A	Y	Informal
8	08-4392	9/22/2008	Pending	Corrections	N/A	Y	Informal
9	08-4393	9/23/2008	Case Closed-Stipulation	Managed Health Care	N/A	Y	Informal
10	08-4634	10/7/2008	Pending	Transportation – Personnel	AA-08-2083	Y	Formal

³ AA: Whistleblower Retaliation Complaint consolidated with prior Adverse Action appeal.
DC: Whistleblower Retaliation Complaint consolidated with prior Discrimination Complaint appeal.
RA: Whistleblower Retaliation Complaint consolidated with prior Reasonable Accommodation Complaint Appeal.
WB: Whistleblower Retaliation Complaint consolidated with prior Whistleblower Retaliation Complaint appeal.

⁴ RDAT: indicates whether complainant requested disciplinary action be taken.

**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2008**

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11	08-4962	10/29/2008	Pending	Corrections	N/A	Y	Informal
12	08-4982	11/4/2008	Case Closed-Stipulation	Mental Health	N/A	N	Informal
13	08-5016	11/3/2008	Case Closed-Appeal Withdrawn by Appellant	Corrections	N/A	N	N/A
14	08-5832	12/30/2008	Case Closed- Dismissed/No Declaration	Board of Equalization	N/A	N	N/A
15	08-5882	12/29/2008	Pending	Agricultural Labor Relations Board	N/A	Y	Informal
16	08-5883	12/29/2008	Pending	Agricultural Labor Relations Board	N/A	Y	Informal
17	08-0023N	1/5/2008	Case Closed-Lack of Jurisdiction	Corrections	N/A	N	N/A
18	08-0340	1/28/2008	Case Closed- Dismissed/No Declaration	Corrections	N/A	N	N/A
19	08-0401E	1/31/2008	Case Closed-Notice of Finding/Dismissed	Corrections	N/A	Y	Informal
20	08-0490	2/13/2008	Case Closed-Notice of Finding/Dismissed	Integrated Waste Management Board	N/A	Y	Informal

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21	08-0494N	2/7/2008	Case Closed-No Prima Facie Case	State Compensation Insurance Fund, Personnel	N/A	Y	N/A
22	08-0548E	2/7/2008	Case Closed-Notice of Finding/Dismissed	Agricultural Labor Relations Board	N/A	Y	Informal
23	08-0643E	2/14/2008	Pending	Mental Health	N/A	Y	Informal
24	08-0717E	2/20/2008	Pending	Corrections	N/A	Y	Informal
25	08-0718E	2/28/2008	Pending	Technology Services	N/A	Y	Informal
26	08-0880E	3/4/2008	Pending	Employment Development Dept - HR	N/A	Y	Informal
27	08-1083E	3/7/2008	Pending	Agricultural Labor Relations Board	N/A	Y	Informal
28	08-1195E	3/20/2008	Pending	State Compensation Insurance Fund, Personnel	N/A	Y	Informal
29	08-1223E	3/21/2008	Pending	Corrections	N/A	Y	Informal
30	08-1752E	4/16/2008	Case Closed-Stipulation	Chaffey Community College District	N/A	N	Informal

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31	08-1784N	4/14/2008	Case Closed-Lack of Jurisdiction	Corrections	N/A	N	N/A
32	08-2268N	5/14/2008	Case Closed-Lack of Jurisdiction	Corrections	N/A	N	N/A
33	08-2384E	5/23/2008	Case Closed-Stipulation	Food and Agriculture	N/A	N	N/A
34	08-2850N	6/13/2008	Case Closed-Notice of Finding/Dismissed	Highway Patrol – Personnel	N/A	N	Informal
35	08-2929N	6/11/2008	Case Closed-Dismissed/No Declaration	Southwestern Community College District	N/A	N	N/A
36	08-2933N	6/5/2008	Case Closed-Dismissed/No Declaration	Corrections	N/A	N	N/A
37	08-2935E	6/20/2008	Pending	Horse Racing Board	DC-08-3207	Y	Formal
38	08-3002E	6/19/2008	Pending	Los Rios Community College District,	N/A	Y	Informal
39	08-3025E	6/23/2008	Case Closed-Notice of Finding/Dismissed	Corrections	N/A	N	Informal
40	08-3136N	6/27/2008	Case Closed-Stipulation	Parks and Recreation	AA-08-1756	Y	Formal

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41	08-3206N	7/2/2008	Case Closed-Appeal Withdrawn by Appellant	Transportation – Personnel	N/A	N	N/A
42	08-3242N	7/8/2008	Case Closed-No Prima Facie Case	State Compensation Insurance Fund, Personnel	N/A	N	N/A
43	08-3370N	7/15/2008	Case Closed-Dismissed/No Declaration	Corrections	N/A	N	N/A
44	08-3371E	7/17/2008	Case Closed-Notice of Finding/Dismissed	State Compensation Insurance Fund, Personnel	N/A	N	Informal
45	08-4119E	9/2/2008	Pending	Corrections	N/A	Y	Informal
46	08-4122E	9/2/2008	Pending	State Compensation Insurance Fund, Personnel	N/A	Y	Informal
47	08-4136E	8/29/2008	Pending	Corrections	N/A	Y	Informal
48	08-4155N	8/28/2008	Case Closed-Lack of Jurisdiction	Parks and Recreation	N/A	N	N/A
49	08-4838E	10/21/2008	Pending	Corrections	N/A	Y	Informal
50	08-5015N	11/4/2008	Case Closed-Lack of Jurisdiction	Housing & Community Development	N/A	N	N/A

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51	08-5067N	11/4/2008	Case Closed-Dismissed/No Declaration	Corrections	N/A	N	N/A
52	08-5460E	12/8/2008	Pending	Transportation – Personnel	DC-08-2465	Y	Formal
53	08-5695N	12/22/2008	Case Closed-Appeal Withdrawn by Appellant	Corrections	N/A	N	N/A
54	08-5798E	12/26/2008	Pending	Alcohol and Drug Program	N/A	Y	Informal
55	08-5800N	12/22/2008	Case Closed-Lack of Jurisdiction	Corrections	N/A	Y	N/A
56	08-4885	10/23/2008	Case Closed-Lack of Jurisdiction	Southern California Gas Company	N/A	Y	N/A
57	08-4932	10/30/2008	Case Closed-Lack of Jurisdiction	Sacramento County Dept. of Animal Care & Regulation	N/A	N	N/A
58	08-4184N	9/7/2008	Case Closed-Lack of Jurisdiction	Los Angeles Unified School District	N/A	N	N/A
59	08-5413N	11/18/2008	Case Closed-Lack of Jurisdiction	Los Angeles Unified School District	N/A	N	N/A
60	08-1187N	03/20/2008	Case Closed-Lack of Jurisdiction	Corrections	N/A	Y	N/A

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61	08-3664	08/12/2008	Case Closed-Stipulation	Department of Real Estate	N/A	N	Informal
62	08-3589	08/07/2008	Case Closed-Dismissed/No Declaration	San Mateo Community College	N/A	N	N/A

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